

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOUTHLAND HOME MORTGAGE
LLC, AND/OR ITS SUCCESSORS
AND/OR ASSIGNEES IN INTEREST,
Plaintiff,
v.
VIDAL ZAVALA,
Defendant.

Case No.: 16cv425-JLS-BGS

**ORDER GRANTING MOTION TO
REMAND**
(ECF No. 4)

Presently before the Court is Plaintiff's Motion for Second¹ Remand. (ECF No. 4.) The Court set a briefing schedule for this Motion on February 29, 2016. (ECF No. 5.) Defendant's response to Plaintiff's Motion was due on March 17, 2016. (*Id.*) Defendant failed to timely file a responsive brief. The Court vacated the hearing and took this matter under submission pursuant to Civil Local Rule 7.1(d)(1). (ECF No. 6.)

Defendant removed this action from the Superior Court of California, County of San Diego on February 18, 2016. (Notice of Removal, ECF No. 1.) Plaintiff filed its Motion to Remand on February 25, 2016. Plaintiff contends that removal was improper because it

¹ The Court notes that, despite the title of Plaintiff's Motion, this appears to be Plaintiff's third motion to remand.

1 was untimely and this Court lacks subject matter jurisdiction over this unlawful detainer
 2 action. (Mot. at 1–2.) Plaintiff states that this is the third time Defendant has improperly
 3 removed this action. (*Id.* at 2.) Obviously, the first two removals resulted in remand orders.
 4 (*See id.*)

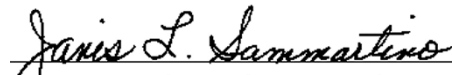
5 The Court concludes that it lacks subject matter jurisdiction under 28 U.S.C. § 1331
 6 because Plaintiff’s Complaint does not present a federal question and under 28 U.S.C. §
 7 1332 because both Plaintiff and Defendant appear to be California citizens, so diversity of
 8 citizenship is lacking. Further, removal was untimely because Defendant was required to
 9 file a notice of removal in this action by April 25, 2015, and failed to do so. *See* 28 U.S.C.
 10 § 1446(b).

11 Additionally, Defendant has consented to the granting of this Motion under Civil
 12 Local Rule 7.1(f)(3)(c). Civil Local Rule 7.1(e)(2) requires “each party opposing a
 13 motion” to file his opposition and serve the movant at least fourteen days before the noticed
 14 hearing date. Civil Local Rule 7.1(f)(3)(c) provides: “If an opposing party fails to file the
 15 papers in the manner required by Civil Local Rule 7.1.e.2, that failure may constitute a
 16 consent to the granting of a motion or other request for ruling by the court.” Thus,
 17 Defendant consented to the granting of this Motion by failing to file a timely response. *Cf.*
 18 *United States v. Warren*, 601 F.2d 471, 473 (9th Cir. 1979) (upholding dismissal of
 19 indictments pursuant to a district court local rule stating that failure to timely oppose
 20 motions is deemed consent to the motion).

21 Accordingly, the Court **GRANTS** Plaintiff’s Motion to Remand. The Court
 22 **HEREBY REMANDS** this action to the Superior Court of California, County of San
 23 Diego.

24 **IT IS SO ORDERED.**

25 Dated: April 4, 2016

26 
 27 Hon. Janis L. Sammartino
 28 United States District Judge